Supreme Court, U.S.
FILED
MAY 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1316 and No. 85-1547

In the

Supreme Court of the United States

October Term, 1985

PULASKI COUNTY SPECIAL SCHOOL DIST., NO. 1, ET AL., ... *PETITIONERS*

v. No. 85-1316

LITTLE ROCK SCHOOL DISTRICT, ET AL., ... *RESPONDENTS*

ARKANSAS STATE BOARD OF EDUCATION, ET AL., ... *PETITIONERS*

V. No. 85-1547

LITTLE ROCK SCHOOL DISTRICT, ET AL., ... *RESPONDENTS*

RESPONSE TO PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PHILIP E. KAPLAN*
KAPLAN, BREWER & MILLER
415 Main Place
Little Rock, AR 72201
(501) 372-0400

P.A. HOLLINGSWORTH
HOLLINGSWORTH & HELLER
415 Main Place
Little Rock, AR 72201
(501) 374-3420

JOHN M. BILHEIMER
324 West Fourteenth
Little Rock, AR 72202
(501) 374-4944

JANET L. PULLIAM
350 Gazette Building
Little Rock, AR 72201
(501) 371-3888

Counsel of Record

QUESTIONS PRESENTED

1. Whether the factual findings of a district court in a school desegregation case will be given the same weight and be subject to the same standards of review as will factual findings of trial courts in other types of cases.

2. Whether a district court may find racial motivation in a sudden hardening of school district boundary lines from circumstantial and other indirect evidence, including a forty-year history of cooperation in boundary changes.

INDEX

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

REASONS WHY THE WRITS SHOULD NOT BE GRANTED 4

I. The plaintiff met the standards set forth in the *Milliken* case which justify interdistrict relief 5

II. Certiorari should not be granted because the lower court's ruling is entirely consistent with this Court's recent decisions 8

III. There is no significant conflict among the Circuit Courts of Appeal in the field of interdistrict remedies for school segregation 15

CONCLUSION 18

TABLE OF AUTHORITIES

Page

Anderson v. City of Bessemer City, 105 S.Ct. 1504 (1985) 8, 12

Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977) 12

Armour v. Nix, 446 U.S. 930 (1980) 16

Columbus Bd. of Ed. v. Penick, 443 U.S. 449 (1979) 9

Dayton Bd. of Ed. v. Brinkman, 433 U.S. 406 (1977) ("*Dayton I*") 13

Dayton Bd. of Ed. v. Brinkman, 433 U.S. 526 (1979) ("*Dayton II*") 13

Goldsboro City Bd. of Ed. v. Wayne County Bd. of Ed., 745 F.2d 324 (4th Cir. 1984) 16

Green v. New Kent County, 391 U.S. 430 (1968) 17

Keyes v. School Dist. No. 1, Denver, Col., 413 U.S. 189 (1973) 14

Lee v. Lee County Bd. of Ed., 639 F.2d 1243 (5th Cir. 1981) 16

Milliken v. Bradley, 418 U.S. 718 (1974) 4, 5, 6, 8, 9, 13

Penick v. Columbus Bd. of Ed., 583 F.2d 787 (6th Cir. 1978) 14

Pullman-Standard v. Swint, 456 U.S. 273 (1982) 8

Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1 (1971) 7

Zinnamon v. Bd. of Ed. of Pulaski County School Dist., No. LR-68-C-154 (E.D. Ark. 1973) 3

No. 85-1316 and No. 85-1547

In the Supreme Court of the United States

October Term, 1985

PULASKI COUNTY SPECIAL SCHOOL DIST., NO. 1, ET AL., ... *PETITIONERS*

v. No. 85-1316

LITTLE ROCK SCHOOL DISTRICT, ET AL., ... *RESPONDENTS*

ARKANSAS STATE BOARD OF EDUCATION, ET AL., ... *PETITIONERS*

V. No. 85-1547

LITTLE ROCK SCHOOL DISTRICT, ET AL., ... *RESPONDENTS*

RESPONSE TO PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

STATEMENT OF THE CASE

This response is submitted to two petitions for certiorari, those filed by the Pulaski County School District and its members (hereafter "PCSSD" or "County District"), No. 85-1316, and by the Arkansas State Board of Education and its members ("State Board"), No. 85-1547. Respondent Little Rock School District ("LRSD") accepts for the most part the statement of facts in the petition filed by the PCSSD. There are

a few points omitted from PCSSD's statement, however, and in a few instances that statement misstates or misrepresents the facts of the case. This statement will seek to supply those omissions and rectify those errors.

The PCSSD was created in 1927 as a result of a special state legislative act allowing consolidation of a number of small school districts in Pulaski County outside the cities of Little Rock and North Little Rock. The two cities had their own school districts. As the two cities expanded over the years, their respective school districts also expanded. The Pulaski County Board of Education (the "County Board"), a governmental agency distinct from the PCSSD but also a defendant in this case, is the body which must approve transfers of territory between school districts. It did in fact approve many such transfers from PCSSD to LRSD and to the North Little Rock School District ("NLRSD") over a period of decades. The County Board recognized the historical basis for the existence of the PCSSD as that of serving students outside the Cities of Little Rock and North Little Rock in 1944, in a formal resolution stating that the PCSSD should embrace only that territory located outside the two cities. All parties—the County Board and the three school districts—acted in accordance with this principle from 1927 to 1968. The two city districts grew as the cities themselves grew, not in absolutely precise lockstep, but in very nearly identical spurts. The County District shrank correspondingly, giving up territory willingly to the city districts for some forty years.

After 1968, however, during a time of substantial growth of the cities themselves (especially the City of Little Rock), this process stopped abruptly. The result is that today about forty per cent of the City of Little Rock lies outside LRSD and remains in the PCSSD. Some seven or eight thousand students live in this area, and thus attend PCSSD schools even though they are residents of the City of Little Rock.

LRSD differs with PCSSD's statements concerning the status of desegregation in the PCSSD itself. PCSSD does not

utilize busing for desegregation purposes to any great extent, and the result is that a large number of its schools remain racially identifiable. PCSSD Appendix, A-31, A-125. [All references to an Appendix will be to the Appendix to PCSSD's Petition for a Writ of Certiorari, and will be indicated simply by the page designation "A-____".] The faculty and staff of the PCSSD are likewise not yet desegregated in many respects. A-32. PCSSD thus has not achieved "desegregation at all levels," as it states that it has.

Finally, the PCSSD carefully omits any mention that the uncontradicted evidence shows that whites who move to the Pulaski County metropolitan area tend to move in disproportionate numbers to the PCSSD, and specifically to the areas served by new, identifiably-white schools recently constructed by the PCSSD. A-123. PCSSD's own expert witness acknowledged this pattern of movement. Those identifiably-white schools have been built since the entry of the 1973 decree in PCSSD's desegregation case, *Zinnamon v. Bd. of Ed. of Pulaski County School Dist.*, No. LR-68-C-154 (E.D. Ark. 1973), and in violation of the school-siting provisions of that decree. A-30, A-31.

REASONS WHY THE WRITS SHOULD NOT BE GRANTED

There is no reason why either of these two petitions for certiorari should be granted, and there are three reasons why they should not. First, the plaintiff LRSD amply met the standards set by this Court in the seminal interdistrict school desegregation case, *Milliken v. Bradley*, 418 U.S 718 (1974) (hereafter "Milliken"), for a plaintiff who seeks an interdistrict remedy. Second, both petitioners have ignored recent decisions by this Court which unequivocally support the rulings of the courts below. Third, there is no conflict among the circuit courts of appeals in the area of interdistrict school desegregation law, despite the claims made by the petitioners to the contrary.

I. THE PLAINTIFF MET THE STANDARDS SET FORTH IN THE MILLIKEN CASE WHICH JUSTIFY INTER-DISTRICT RELIEF.

To begin with the *Milliken* decision itself, that case sets forth three distinct grounds on which interdistrict relief could be based in desegregation cases. Each of these three grounds is alone a sufficient basis for interdistrict relief. Each is present in this case. The three *Milliken* predictates for interdistrict relief are that such relief is warranted (a) where actions of the state or its constituent agencies and officials have caused significant interdistrict segregation; (b) where actions of one or more school districts have caused significant interdistrict segregation; or (c) where boundary lines between districts have been drawn on the basis of race. 418 U.S. at 745.

Under *Milliken*, the actions and omissions of a state, standing alone, can provide the basis for interdistrict relief. This point is wholly overlooked by the petitioning PCSSD. There are numerous actions of the State of Arkansas and its officials and its constituent agencies in the present case which were found by the district court to have contributed significantly to the interdistrict segregation now found in Pulaski County. Many of them, including the deliberately segregative actions of the Governor of the State, are detailed in the opinion of the Court of Appeals, at A-10 through A-24. Others include the acts and omissions of the City of Little Rock, the City of North Little Rock, Pulaski County, the Arkansas Real Estate Commission, and the Little Rock Housing Authority, all creatures of the State, which combined to provide a substantial amount of black-occupied public housing within the LRSD but none in the PCSSD. A-112 through A-114.

PCSSD's petition misrepresents the findings and the evidence regarding the several housing-related constitutional violations. It claims that no interdistrict effects arose from those violations. However, the evidence

is uncontradicted that public housing acts as a magnet factor for blacks. The fact that no public housing was ever built in the PCSSD, although there was ample statutory authority for doing so and although there is a large amount of public housing in the LRSD, means that this magnet factor draws black families into the LRSD and not into the PCSSD. The district court so found. A-114. Yet, in the face of these findings, the PCSSD says or implies that there is no interdistrict effect attributable to the location of public housing.

Where states' actions and omissions are as numerous and pervasive as those found in the present case, they would warrant substantial interdistrict relief, even if standing alone. The respondent LRSD need not and does not rely on the acts and omissions of the State of Arkansas alone to support the interdistrict remedy ordered below, since there are concurrent and extensive violations on the part of the PCSSD causing interdistrict effects. However, since *Milliken* clearly states that the actions of a state *or* of local school districts, which have an interdistrict segregative effect, can give rise to an interdistrict remedy, it is somewhat disingenuous of the PCSSD to ignore this entire alternative rationale for interdistrict relief.

The second *Milliken* predicate for an interdistrict remedy is that such a remedy is proper where actions and omissions of school districts themselves produce interdistrict segregation. There are extensive factual findings on the issues of PCSSD's constitutional violations and resulting interdistrict segregation. Two courts have recited them at length, but some of them will be listed again: PCSSD has built new schools in locations which serve to promote racial separation (A-30, A-32, A-122); its busing practices further exacerbate the racial identification of its schools (A-31, A-125); it buses a disproportionately large number of black students (A-31); it has hired and promoted too few black staff members (A-32, A-125); it discriminates

against black students in its special education program (A-32, A-127, A-128); it has closed schools in black neighborhoods (A-30); and it has egregiously failed to follow the terms of its court-approved desegregation plan (A-30 through A-32, A-120, A-124). All these violations have been found to have interdistrict segregative effects.

The PCSSD once more misrepresents the evidence and the lower courts' findings in regard to its having placed new school buildings in areas of white population distant from the black community, in violation of its own desegregation decree and of this Court's mandate in *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971). There is ample and uncontradicted evidence that these new schools were built in areas of white expansion and that they were kept white through the PCSSD's student-assignment practices. PCSSD's own expert witness acknowledged that whites moving into the overall metropolitan area tended to migrate toward these new schools.

The evidence is in fact virtually overwhelming as to the segregative, interdistrict effect of the PCSSD's site-selection practices. This is not a case which deals solely with demographic trends, occurring in a vacuum, unrelated to the acts of governmental bodies; this is a case of widespread constitutional violations committed by several governmental actors. All PCSSD's acts were found by the two lower courts to have contributed to today's segregated conditions in Pulaski County.

The third basis for interdistrict relief is that it is appropriate where district boundaries have deliberately been drawn on the basis of race. In Pulaski County, there was a tradition of LRSD expansion and PCSSD deannexation as the City of Little Rock expanded. That practice stopped abruptly after 1968. There have been conflicting explanations as to the reasons for the cessation of LRSD expansion, but the district court resolved that conflict by finding that the PCSSD's "acts of freezing its boundaries to

discontinue the practice of allowing city and Little Rock School District boundaries to remain coterminous springs from an unconstitutional racial motive." A-111[1] Thus we have in this case, instead of a drawing of boundary lines because of race, a failure to redraw boundary lines because of race. The third of the *Milliken* grounds for interdistrict relief has therefore been established. In sum, all of the three separate methods which *Milliken* sets forth as warranting interdistrict relief are present in this case.

II. CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE LOWER COURT'S RULING IS ENTIRELY CONSISTENT WITH THIS COURT'S RECENT DECISIONS.

The second reason why certiorari should not be granted is that the petitioners' arguments fly in the face of recent rulings of this Court. The petitioners completely ignore three such holdings. The most obvious instance of their avoiding mention of Supreme Court rulings is, as shown above, the manner in which the alternative *Milliken* bases for relief are systematically overlooked.

The second set of Supreme Court decisions which the petitioners disregard relates to their utter failure to recognize the role of a trial court as the finder of facts. This Court has recently emphasized the importance of this function, particularly in civil rights cases, recognizing the importance of the trial court's role in making complex factual determinations. *Anderson v. City of Bessemer City*, 105 S.Ct. 1504 (1985); *Pullman-Standard v. Swint*, 456 U.S. 273 (1982) (hereafter "Swint"). The petitioners never mention either of these decisions. Instead, they quarrel at

---

1 Since PCSSD admits that boundary-freezing would justify interdistrict relief, it argues with the lower courts' findings on this issue. Its arguments are discussed more fully below, in connection with the appropriate role of the district court in making factual determinations.

length with the district court's (and the appellate court's affirmance of the district court's) findings that there were significant countywide, interdistrict effects flowing from the numerous constitutional violations, but they never acknowledge that those findings are factual ones. They imply that factual findings such as these are not really factual findings at all, but have somehow become transmuted into questions of law. Such questions will usually be difficult ones, but they remain questions of fact. *Columbus Bd. of Ed. v. Penick*, 443 U.S. 449, 470-471 (Stewart, J., concurring). The petitioners' position on issues like these is rather like that of the Fifth Circuit before this Court's decision in *Swint*, *supra*; they would like for questions of this type to be called "ultimate" questions of fact and to be subjected to some lesser standard of review than "subsidiary" or "primary" questions. They do not make that argument squarely, of course, because it is squarely foreclosed by *Swint*, but that is exactly what their argument means.

PCSSD argues that it was not guilty of refusing to allow the decades-old process of transfer of territory from PCSSD to LRSD to continue. If any district lines have been drawn or maintained on the basis of race, an interdistrict remedy is appropriate, as PCSSD admits. *Milliken*, 418 U.S. at 744-45. While grudgingly acknowledging that the district court found that race was a motivating factor in this hardening of the boundaries, and that this fact finding was approved by the Court of Appeals, PCSSD argues that there are no underlying facts upon which the district court could make this finding.

PCSSD asks this Court to look only at whether or not there had been a petition for deannexation since 1968. This argument is not only politically naive, but it ignores the evidence before the trial court and the facts from which inferences are drawn. All who have served on public bodies and most of those who have not recognize that political decisions are made in private meetings, executive sessions,

and exchanges between governmental entities. The actual petition for governmental action is often a mere formality for decisions already made. The puzzle of why the PCSSD suddenly hardened its boundaries was carefully focused in the district court at the trial of this case, and the court found that race was a motivating factor.

From its inception in 1927, the newly-created PCSSD was intended to include all the area in Pulaski County that lay outside the Cities of North Little Rock or Little Rock, and the boundaries of LRSD and NLRSD were to remain coterminous with their respective cities. This historic intention was reiterated in the statements found in a 1944 resolution of the Pulaski County Board of Education:

> It is, therefore, by the Board ordered that all of Pulaski County, outside the territory embraced in the cities of Little Rock and North Little Rock, be created and organized into a special school district to be named and known as Pulaski County Special School District.

From its creation until 1968, the PCSSD participated and cooperated in a practice of allowing both the NLRSD and LRSD to expand their boundaries as city boundaries expanded, to remain coterminous. On the north side of the river, this intention was exemplified by the PCSSD's concurrence in NLRSD's use of "natural attendance zones." These were areas of new residential housing bordering the NLRSD. Students living in these areas were allowed to attend the NLRSD without tuition or any formal transfer procedure. This practice continued until the late 1960's. Further evidence of PCSSD's cooperation in maintaining coterminous boundaries was NLRSD's placing its Northeast Junior/Senior High complex on land which was actually physically located within the PCSSD boundaries at the time construction was begun.

Coupled with the legislative intent and pattern of cooperation in allowing the school districts on both sides of

the river to be coterminous with their cities was PCSSD's long-standing policy of advocating consolidation of the districts. Two major efforts to consolidate the districts took place in 1960 and 1967. In the midst of consolidation discussions, desegregation suits were filed against NLRSD and LRSD. Almost instantly the PCSSD froze its boundaries. Since that time, the PCSSD has not been willing to consolidate with the other two districts or to allow its territory to be annexed to either. As time passed and the student body of the LRSD became increasingly black, the PCSSD became more adamant about freezing its boundaries.

The district court found that this freezing of the boundaries came only after the institution of desegregation efforts directed toward the school districts. It further found that the boundary-freezing not only sprang from unconstitutional racial motives, but has significant interdistrict effects on the LRSD. A-111.

Additional evidence underpinning the district court's finding of interdistrict effects came from the actions of other governmental bodies which worked in concert with the PCSSD. Among them were the willingness of the City of Little Rock to allow the PCSSD's tax base to develop at the expense of the LRSD. Most importantly, the court found that Little Rock cooperated with the PCSSD in expanding its city limits and extending city services to new PCSSD school sites, thereby assisting the PCSSD in siting new schools in violation of its desegregation decree. A-122, A-123. Thus new schools sprang up, areas of white suburban housing grew around them, and the city limits expanded to take them all in, but the boundaries of the LRSD did not grow.

PCSSD has received substantial tax advantages, having interdistrict effects on the LRSD, from agreements reached between the PCSSD and the City of Little Rock for PCSSD to receive payment from industries in lieu of taxes,

in connection with issuance of industrial revenue bonds. These agreements between the City of Little Rock and the PCSSD were totally volitional, not mandated by any statute. During this same period, the LRSD had no similar arrangements and received no funds whatever from agreements with the City of Little Rock. A-111, A-112.

The district court's findings of racial motive and inter-district effects were thus based upon the history of maintaining coterminous boundaries, the timing of the abrupt change in the practice, the record of governments acting in concert at the expense of the LRSD, the general attitude of the PCSSD as reflected by its actions and its minutes, and the PCSSD's abandonment of a policy advocating consolidation of all of the districts. To suggest that the findings must be based only on the simple fact of whether or not a formal petition for deannexation was filed, without an examination of the possible explanations, is not only politically naive; it ignores the entire record of forces at play in a community. The district court conducted a sensitive inquiry into such circumstantial and direct evidence of intent as was available. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). That intent, stemming from impermissible racial motives, was found, based upon all of the evidence.

It is the duty of a district court to choose between differing possible sets of facts which offer an explanation of situations such as suddenly-frozen boundaries, *Anderson v. City of Bessemer City, supra*, and this district court did so. It found as a fact that the PCSSD chose to freeze its boundaries for racial reasons. The Court of Appeals upheld that determination. A-28. PCSSD now attacks this finding, but does so without admitting that it is a finding of fact, without mentioning *Swint* or *Bessemer City*, and without any reference to the clearly erroneous standard of review.

The third, and probably the major, omission from the two petitions for certiorari is their complete failure to

discuss this Court's decisions in *Dayton Bd. of Ed. v. Brinkman*, 443 U.S. 526 (1979) (*Dayton II*) and *Columbus Bd. of Ed. v. Penick*, 443 U.S. 449 (1979). It is not surprising that they avoid mention of these two decisions, since the approach they take to the present case was explicitly rejected in the two cases.

When numerous and extensive violations have been shown in a school desegregation case, as is the case here, a central issue for decision becomes one of how to assess the present effects of constitutional violations; i.e., how much of a current segregative effect those violations have caused. One possible analytical approach is that each violation must be separately and discretely reviewed in isolation, with the effects of that particular violation traced out in minute detail, presumably through the researches and testimony of social scientists from many disciplines, and then a remedy declared which will rectify that narrowly-defined effect. This process is then repeated: another violation is separately identified, its effects are distinctly and discretely measured out in isolation, using the same sorts of methods, and a remedy is determined for that violation. The process is repeated again and again.

The *Milliken* decision, heavily emphasized by both petitioners, does not tell us how one is to approach the violation-and-effect analysis. *Dayton II* and *Columbus* fill in that gap. The petitioners' exact argument was made in those two cases, and this Court rejected it. The school district defendants in *Dayton* and *Columbus* had argued against broad-based desegregation remedies and for the precision-of-measurement type of analysis described above. In *Dayton II*, this Court said:

> Finally, [the school districts] contend that the District Court correctly interpreted our earlier decision in this litigation as requiring respondents to prove with respect to each individual act of discrimination precisely what effect it has had on current patterns of

> segregation. *This argument results from a misunderstanding of Dayton I* [433 U.S. 406 (1977)] . . .

Dayton II, 433 U.S. at 540 (emphasis added). That same misunderstanding forms the basis for the petitioners' claims now.

Using the analysis prescribed in *Dayton II* and *Columbus*, both lower courts found interdistrict violations and substantial interdistrict effects in the present case. When such effects are shown, an interdistrict remedy is called for. *Milliken*, p. 745. Neither of the lower courts adopted the artifically segmented approach urged upon this Court by the petitioners in *Dayton* and *Columbus* and by the petitioners here. As the Sixth Circuit said:

> *Dayton* [I] does not . . . require each of fifty segregative practices or episodes to be judged solely on *its* separate impact on the system. The question posed concerns the impact of the total amount of segregation found—after each separate practice or episode has added its "increment" to the whole. It was not just the last wave which breached the dike and caused the flood.

Penick v. Columbus Bd. of Ed., 583 F.2d 787, 814 (6th Cir. 1978) (emphasis in original).

The State Board makes the same contention as the PCSSD in asking to have each violation looked at in isolation, and then adds its own separate twist to the argument, since many violations of which the State is guilty result from its failure to act. The State of Arkansas, as a *de jure* segregation state, is of course obligated to act affirmatively to eliminate all remnants of segregation. *Keyes v. School Dist. No. 1, Denver, Col.*, 413 U.S. 189 (1973). Arkansas statutes give the State Board wide-ranging powers to review or supervise many aspects of school districts' operations. A-11, n. 4; A-158, A-159. That Board has never acknowledged its affirmative duty to desegregate at any time in this litigation. Rather, it makes an almost-

incredible argument about its powers: it says it has never "interpreted" Arkansas state statutes, which admittedly give it apparently "wide-ranging supervisory power" over local schools' affairs, to give it such power in fact. State Board petition, p. 10. [2] This argument can only mean that, because the Board has never chosen even to try to use the powers it appears to hold under state statutes, it should be relieved of any responsibility for desegregating Arkansas' schools and should be exonerated from any liability in this case. These numerous sins of omission, when coupled with the equally numerous sins of commission (e.g., the role of the housing authorities, which are creatures of the state, in concentrating black families in the LRSD), were all part of the flood of violations. The State Board, like the PCSSD, would have this Court look only at the last wave over the dike.

The lower courts in the present case correctly refused to follow an approach this Court had already rejected. That refusal is the only real complaint the petitioners have with the lower courts' decisions, and that is the only basis for their seeking certiorari.

III. THERE IS NO SIGNIFICANT CONFLICT AMONG THE CIRCUIT COURTS OF APPEAL IN THE FIELD OF INTERDISTRICT REMEDIES FOR SCHOOL SEGREGATION.

There is no basis for granting certiorari because of some alleged conflict among the Circuit Courts of Appeal.

---

2 LRSD notes that the State Board has apparently, although belatedly, recognized that it does indeed possess the powers it appears on paper to possess but that it has never exercised. In responses to interrogatories received by the LRSD in April, 1986, the State Board states that it is in the process of adopting regulations which will help achieve desegregation within local school districts. If it has the power to adopt such regulations now, which the LRSD agrees that it has, why did it not have such power ten, fifteen or twenty years ago, when it had substantially identical regulatory authority by statute?

The petitioners would have this Court believe that the decision below is contrary to holdings of the Fourth and Fifth Circuits in *Goldsboro City Bd. of Ed. v. Wayne County Bd. of Ed.*, 745 F.2d 324 (4th Cir. 1984), and *Lee v. Lee County Bd. of Ed.*, 629 F.2d 1243 (5th Cir. 1981), and contrary to the decision in *Armour v. Nix*, No. 16708, slip op. (N.D. Ga. 9/24/79), aff'd 446 U.S. 930 (1980). There is no such inconsistency. *Goldsboro* and *Lee County* were both cases where the district court had found no significant interdistrict effects, basing their decisions on the conflicting evidence before them. Both courts of appeals properly accepted the trial courts' findings, as they were required to do under *Bessemer City, supra*, and *Swint, supra*. The Eighth Circuit did the same in the present case: the trial court found that there were significant interdistrict effects, and the appellate court upheld that finding.

Armour v. Nix was not a decision by this Court on the merits of a case, but was instead a summary affirmance of a decision by a three-judge district court. The trial court there had made detailed factual findings, just as the trial court did here. The findings there were that no school district boundaries had been drawn or maintained on the basis of race, that all the school districts involved were either unitary or were being operated in accordance with a court-approved desegregation plan, that there were no interdistrict segregative effects arising from the few violations found, and that there was no evidence of school district cooperation with other governmental bodies to maintain racially-identifiable schools. Those findings were presumably accurate on the basis of the evidence before that court. None of those facts is true of the present case. It is indeed correct to say that there should be no interdistrict remedy where there are no interdistrict effects, no boundaries maintained on the basis of race, and no cooperative effort to maintain racially-identifiable schools, and where school districts are in full compliance with their desegregation decrees. It is quite another to say, as PCSSD apparently does, that there can be no interdistrict remedy where there are findings to the contrary.

Another principle ignored by both petitioners, and another difference between the present case and *Goldsboro* and *Armour*, is the duty shouldered by *de jure* school systems to eliminate all remnants of segregation from their former dual school systems. All three of these school districts are former *de jure* systems and all three are judicially-determined constitutional violators. None has reached unitary status; NLRSD has actually sought and been denied a judicial determination of unitariness. PCSSD, far from being unitary, has in fact been operating in violation of its desegregation order. PCSSD's arguments about the discriminatory purpose, or lack of discriminatory purpose, underlying some act or omission carry little weight when offered by a non-unitary, former *de jure* school district which stands in violation of its own desegregation decree. They are reminiscent of the defenses put forward by the school districts and found wanting in *Green v. New Kent County*, 391 U.S. 430 (1968), and its companion cases.

CONCLUSION

The petitions for certiorari ignore major principles of school desegregation and civil rights law which have recently been enunciated by this Court, and they make arguments grounded in reasoning recently rejected by the Court. They argue disputed questions of fact without acknowledging that they are questions of fact, and the State Board makes a rather tortuous argument about the meaning of Arkansas state statutes. There is no reason presented in either petition why a writ of certiorari should be granted.

Respectfully submitted,

PHILIP E. KAPLAN*
KAPLAN, BREWER & MILLER
415 Main Place
Little Rock, AR 72201
(501) 372-0400

P.A. HOLLINGSWORTH
HOLLINGSWORTH & HELLER
415 Main Place
Little Rock, AR 72201
(501) 374-3420

JOHN M. BILHEIMER
324 West Fourteenth
Little Rock, AR 72202
(501) 374-4944

JANET L. PULLIAM
350 Gazette Building
Little Rock, AR 72201
(501) 371-3888

**Counsel of Record*